IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.91 OF 2005

Shri Yashwant Gopal Ghaisas ...Applicant

Versus

Shri.J.N.Pare & Anr. ...Respondents

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Mr.Dilip Taur for Applicant.

None for Respondent No.1.

Mr.K.V.Saste, A.P.P. for Respondent No.2.

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CORAM: A.M.KHANWILKAR, J.

APRIL 13, 2005.

P.C.

1. The only point that is canvassed before this Court is that the legal position stated by the Apex Court in the recent Judgement, will be of no avail in the fact situation of the present case because the Magistrate had considered the application for recall of process much prior to the said decision, sometime on 25th October 2001.

2. This submission clearly overlooks the fact

that the correctness of the decision rendered by the Magistrate on 25th October 2001 was put in issue before the Revisional Court on 25th January 2002 by way of Revision filed by the Respondent. During the pendency of the Revision Application, the Apex Court expounded the legal position with regard to the jurisdiction of the Magistrate to entertain Application for recall of process. As that view has been taken by the Apex Court during the pendency of the Revision Application, the Revisional Court was bound by the said decision and was justified in answering the question against the Applicant, relying on the recent exposition of the Apex Court on the issue.

3. Viewed in this perspective, the argument that the recent decision of the Apex Court in the case of **Subramanium Sethuraman vs. State of Maharashtra reported in 2004 (4) Crimes 78 (SC)**, cannot be given retrospective effect, does not arise for consideration in the present case in that sense, as the revision order was continuation of the proceedings taken out by the Applicant for recall of process before the Magistrate. Hence,

dismissed.

A.M.KHANWILKAR, J.